

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JORDAN KEEFE,

Plaintiff,

vs.

MIKE BURESH,

Defendant.

CV 15-00103-H-DLC-JTJ

ORDER

At issue is Plaintiff Jordan Keefe's "Motion to Notify of Contempt of Court by the Defendants' Council [sic]." (Doc. 23.) In the motion, Mr. Keefe alleges that on July 13, 2016, counsel for Defendant called Unit Manager Ben Bouley at Montana State Prison and requested the retrieval of all kites and grievances against Officer Buresh. UM Bouley ordered Sgt. Hotchkiss to search Mr. Keefe's evidence and retrieve or take all documents. (Doc. 23.) No documents were taken.

On August 9, 2016, the Court issued an Order finding that Defendant's counsel violated Local Rule 26.1(d). (Doc. 31 at 4.) Since no relief was requested in the motion, Mr. Keefe was given an opportunity to indicate to the Court the relief he was seeking based upon counsel's actions. (Doc. 31 at 5.) Mr. Keefe filed "Motion for Relief due to Rule 26.1(d) Violations" on August 23, 2016, asking for a bench trial and to impose a fine. (Doc. 32.) Defendant did not

respond to Mr. Keefe's request but did file an Objection to the Order pursuant to 28 U.S.C. § 636 and Rule 72, Fed.R.Civ.P. arguing that the August 9, 2016 Order was clearly erroneous. (Doc. 38.)

Although counsel took advantage of Mr. Keefe's incarceration to engage in discovery prior to the issuance of a scheduling order, such activity constituted a minor violation of the Court's local rules. The Court will not tolerate violations of the Local Rules, but Mr. Keefe has not shown that he suffered any prejudice or other injury as a result of the incident. If he has the documents at issue, he has now been required to produce those documents pursuant to the Court's August 2, 2016 Amended Scheduling Order (Doc. 30). The Court sees no basis upon which to fine counsel and it will not deny Defendant of his constitutionally protected right to a jury trial.

Based upon the foregoing, the Court issues the following:

ORDER

1. Mr. Keefe's "Motion to Notify of Contempt of Court by the Defendants Council [sic]" (Doc. 23) is **GRANTED**. The Court has been so notified.
2. Mr. Keefe's "Motion for Relief due to Rule 26.1(d) Violations" (Doc. 32) is **DENIED**.
3. At all times during the pendency of this action, Mr. Keefe must

immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

DATED this 5th day of October 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge